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No. 81-2112

In the

Supreme Court of the United States

OCTOBER TERM, 1981

DONALD PETERS, ROBERT T. SIMPSON, JR., WAREHOUSE, MAIL ORDER, OFFICE, TECHNICAL AND PROFESSIONAL EMPLOYEES, LOCAL 743, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,

Petitioners,

vs.

HEALTH AND HOSPITALS GOVERNING COMMISSION OF COOK COUNTY,

Respondent.

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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There Are No Adequate Non-Federal Grounds Supporting The Illinois Supreme Court's Decision

Respondent asserts the Illinois Supreme Court decision is supported by two adequate non-federal grounds, to wit, the bar on the delegation of discretionary public responsibility and the right to terminate the collective bargaining election agreement at will. The former is not

a tenable basis upon which to deny enforcement of the collective bargaining election agreement; the latter is not the law of the case. The Illinois Supreme Court specifically stated that it was not ruling upon that issue, thereby leaving the Illinois Appellate Court's determination intact.

Discretionary public responsibility of the Respondent has not been delegated by the collective bargaining election agreement. The agreement does not require either party in the negotiations to agree upon the proposals submitted by the other, and it does not delegate any public responsibility to the union. Rather, the agreement recognizes the respondent's right to direct its operations and to determine its policy. As long as neither party may be compelled to agree, discretionary policy making is controlled by the respondent. This point was acknowledged by the Illinois Appellate Court. Thus, neither the agreement or its collective bargaining obligation interferes with respondent's policy making role.

The cases relied upon by the state court and respondent, *Board of Trustees* v. *Cook County College Teachers Union, Local 1600,* 74 Ill.2d 412, (1979); 386 N.E.2d 47; *Board of Trustees* v. *Cook County College Teachers Union, Local 1600,* 62 Ill.2d 470, 343 N.E.2d 473 (1976); *Illinois Education Association* v. *Board of Education,* 62 Ill. 2d 127, 340 N.E.2d 7 (1975), involve the improper delegation of authority to labor arbitrators to issue final and binding interpretations of collective bargaining agreements. In such matters as teacher terminations. These decisions do not mean that negotiations themselves constitute a delegation of discretionary public responsibility. In the absence of a requirement to agree, there is simply no such delegation.

Because the court's decision is not based upon a proper analysis of the collective bargaining election agreement and negotiations obligations, the asserted non-federal ground is plainly untenable. Review by this court is warranted to assure that the constitutional mandate against contract impairment is not evaded by a state court decision which only facially purports to avoid the issue. *Indiana ex rel. Anderson* v. *Brand*, 303 U.S. 95 (1938); *Ancient Egyptian Arabic Order of Nobles of the Mystic Shrine* v. *Michaux*, 279 U.S. 737, 744-45 (1929); *Columbia Railway Gas and Electric Co.* v. *South Carolina*, 261 U.S. 236, 247 (1923); *Hartford Life Insurance Co.* v. *Barber*, 245 U.S. 146 (1917); *Detroit United Railway* v. *Michigan*, 242 U.S. 238, 247 (1916); *Ward* v. *Love County*, 253 U.S. 17 (1920). See also *Petition For Writ of Certiorari*, at 11-17.

Alternatively, the delegation of discretionary responsibility ground is not sufficiently independent and broad enough to support the state court's decision because it is interwoven into the contract impairment issue. *Johnson Oil Refining Co.* v. *Oklahoma*, 290 U.S. 158, 160 (1933); *Creswill* v. *Grand Lodge Knights of Pythias of Georgia*, 225 U.S. 246 (1912). Intrensic to the Illinois Supreme Court's refusal to transfer the contract provisions and enforce them is its untenable believe that discretionary responsibility would be delegated. The federal issue of contract impairment is thus based upon the court's delegation of discretionary ground. The issue is simply too tightly tied to the contract impairment problem to be sufficiently independent. The connection between delegation and contract impairment issues is siimlar to the interweaving of a state court's resolution of taxable situs for property with due process of law-taxation-claims.

See generally, *Johnson Oil Refining Co.* v. *Oklahoma, supra.* In *Johnson Oil,* this Court examined the Oklahoma Supreme Court's decision applying an *ad valorem* tax on an entire fleet of railroad tank cars which were not always located within the state. This court asserted jurisdiction because the federal right turned on a determination of situs. Therefore, the delegation issue is not sufficiently independent or broad to be an adequate non-federal ground.

Respondent's assertion of a second non-federal ground based upon the "terminable at will" doctrine is not supported by the Illinois Supreme Court's decision. That court did not specifically decide that the collective bargaining election agreement is terminable at will. The court assumed that the contract contains an ascertainable point of termination, but held it to be unenforceable. The Illinois Appellate Court exhaustively considered the issue and held the contract not to be terminable at will because it contains ascertainable points of termination based upon the union's decertification (loss of majority status) and either party's refusal to honor an arbitration award. See Appendix B, *Petition For Writ of Certiorari,* at 11A-15A. Because the Illinois Supreme Court did not base its decision upon the terminable at will doctrine, and did not overrule the decision of the Illinois Appellate Court, the terminable at will doctrine cannot be advanced as a basis upon which to defeat this Court's jurisdiction.

The County Hospitals Act Is The Subsequently Enacted Statute Which Impaired The Contract

The Illinois Supreme Court specifically stated:

> The narrow question presented is whether, because section 10 of the County Hospitals Act provides that the duties and obligations of the Commission shall become the duties and obligations of the Board, the defendants can be required to negotiate in accordance with the prayer of the complaints. *Peters, et al* v. *Health and Hospitals Governing Commission of Cook County*, 88 Ill. 2d 316, 318 430 N.E.2d 1128, 1130 (1981).

There is no doubt that the transferring provision of the County Hospitals Act, contained in section 10, was the only statute interpreted below. Section 10 is reprinted at page 3 of the *Petition For Writ of Certiorari.*

Respondent is, therefore, incorrect in its assertion that the County Hospitals Act is only one of three sources of authority upon which the court based its decision. The court clearly stated the County Hospitals Act is the basis of the question presented. The Board of Commissioners could not have asserted authority over the employees covered by the collective bargaining election agreement without the passage of the County Hospitals Act. The state court's application of this act to the election agreement constitutes an unconstitutional impairment. The court obviously answered its narrowly framed question in the negative by holding that the election agreement does not transfer as an obligation pursuant to section 10 of the act.

CONCLUSION

There are simply no adequate non-federal grounds to support the decision of the Illinois Supreme Court which applied a subsequently enacted law to impair the collective bargaining agreement, and certiorari should be granted.

Respectfully submitted,

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